

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL NO: 07-408
v.	*	SECTION: "I"
DAMON BURKHALTER	*	

* * *

FACTUAL BASIS

Should this matter proceed to trial, the United States would prove beyond a reasonable doubt, through credible testimony and reliable evidence, the following facts:

On July 6, 2007, July 13, 2007, July 18, 2007, July 27, 2007, October 23, 2007, and November 8, 2007, the U/C purchased heroin from Williams, in exchange for United States currency. The heroin was forensically analyzed and determined to weigh 4.1 grams, 1.6 grams, 1.7 grams, 1.4 grams, 6.3 grams, and 6.4 grams, respectively. Milton Joseph IV ("Joseph") provided Williams with all of the aforementioned quantities of heroin. Joseph received the heroin that he supplied to Williams from Damon Burkhalter ("BURKHALTER"). All of the aforementioned drug transactions occurred in the Eastern District of Louisiana.

Just prior to meeting with Williams on July 13, 2007, July 18, 2007, and July 27, 2007, surveillance agents followed Joseph as he drove to and appeared to briefly enter an apartment located

at 1434 ½ North Derbigny Street, New Orleans, Louisiana. Joseph then departed in his vehicle and met with Williams.

In addition, on November 2, 2007, and November 8, 2007, surveillance agents watched as Joseph drove his vehicle, parked and again appeared to briefly enter the apartment located at 1434 ½ North Derbigny Street. Surveillance agents then followed Joseph as he departed in his vehicle and appeared to engage in hand to hand drug transactions. On each day, one of the individuals who appeared to receive drugs from Joseph was arrested shortly after the drug transaction occurred. Heroin, wrapped in aluminum foil packets, was recovered from the individuals at the time of their arrests. The heroin was forensically analyzed and weighed .28 grams, and .31 grams, respectively.

On October 18, 2007, the Honorable Sarah S. Vance, District Court Judge in the Eastern District of Louisiana, entered an order that authorized a Title-III wire intercept of conversations over a cellular telephone used by Joseph. The wire intercept was terminated on November 16, 2007.

Beginning on or about October 24, 2007, and continuing to on or about November 3, 2007, a series of conversations were intercepted between Joseph and BURKHALTER. The conversations revealed that Joseph was out of heroin, or had very little heroin left to sell, and BURKHALTER told Joseph that he would re-supply Joseph with a quantity of heroin as soon he could obtain it from his regular heroin source.

October 26, 2007, a conversation was intercepted between Joseph and an individual who resided in Mississippi. The individual from Mississippi requested to purchase two-quarter ounces of heroin from Joseph for him and his associate. Joseph said that he was waiting to be re-supplied by his source and therefore did not have two-quarter ounces of heroin to sell at that time. Within minutes after their conversation ended, Joseph contacted BURKHALTER and told BURKHALTER that he

had some “out of towners” who wanted to buy a half-ounce of heroin. Joseph told BURKHALTER that he knew he was out of heroin at that time, but asked BURKHALTER if it was possible for BURKHALTER to retrieve a half-ounce of heroin for him from an alternative heroin source in the New Orleans area.

A short time later, during another intercepted conversation, BURKHALTER told Joseph that he could purchase the half-ounce of heroin for Joseph, but he expressed concerns that the quality of the heroin may be inferior to the quality of the heroin BURKHALTER normally supplied Joseph with which he received from his regular source.

Joseph decided to purchase the heroin, and he and BURKHALTER agreed to meet a short time later in order for BURKHALTER to deliver the heroin to Joseph. Joseph then contacted the individuals from Mississippi and told them he could supply them with the two-quarter ounces of heroin, and agreed to meet them a short time later at the Popeye’s Restaurant located at the intersection of the Interstate 10 service road and Read Boulevard, in East New Orleans. At approximately 7:03 p.m., surveillance units saw BURKHALTER and Joseph arrive in their respective vehicles at the intersection of Acasia Street and Piedmont Street, in New Orleans. They exited their vehicles, met briefly in the street, returned to their vehicles and left the area. Surveillance units then followed Joseph to the Popeye’s Restaurant. Once Joseph parked at the restaurant, an individual stepped out the driver’s seat of a vehicle bearing a Mississippi registration tag and stepped into Joseph’s vehicle. Several moments later the individual returned to the vehicle with Mississippi registration and left the area. It should be noted that, during one of the aforementioned intercepted calls, in addition to the quarter-ounce of heroin, JOSEPH agreed to sell one of the individuals from Mississippi twenty-eight (28) grams of

heroin for \$3000, as soon as he received an additional supply of heroin from BURKHALTER'S regular source.

On or about November 3, 2007, BURKHALTER re-supplied Joseph with a large quantity of heroin. However, because the purity of the heroin was poor, Joseph immediately received complaints about its quality from his customers. As a result, Joseph and BURKHALTER engaged in a number of conversations in an effort to remedy the problem regarding the purity of the heroin. Ultimately, on November 15, 2007, BURKHALTER and Joseph agreed to purchase 28 grams of heroin, from an alternative heroin source, to mix with the heroin possessed by Joseph in an effort to increase its purity.

In addition, on November 6, 2007, a conversation was intercepted between Joseph and a third-party. During the conversation, Joseph agreed to sell the third party a quantity of heroin in exchange for \$550. Later that day, surveillance units saw Joseph and the third party meet in New Orleans and consummate the transaction. The third party was subsequently arrested and a quantity of heroin was recovered from his possession that was forensically analyzed and determined to weigh approximately 3.7 grams.

On November 30, 2007, a search warrant was executed at 1434 ½ North Derbigny Street, New Orleans, Louisiana. Inside the residence, approximately 20.3 grams of heroin were recovered, along with digital scales, a box of plastic baggies, aluminum foil wrap, a cutting agent, a plate, two spoons, a grinding machine, and cutting materials. The two spoons, plate, electronic scale, and grinding machine were forensically analyzed. Forensic analysis revealed that the spoons, plate, digital scale, and grinding machine contained heroin residue. The amount of residue taken from the grinder weighed 1.1 grams. When Joseph was arrested on November 30, 2007, keys to 1434 ½ North Derbigny Street were found in his possession.

All of the drugs that were recovered during the course of this investigation was tested by the DEA Laboratory in Dallas, Texas and all substances tested positive for illegal drugs, including cocaine base, heroin, and Diazepam. Furthermore, based on the wire intercepts, undercover purchases, and statements of co-conspirators the defendant, **Damon Burkhalter**, and the government agree and stipulate that he should be held accountable for at least 100 grams but less than 400 grams of heroin that were reasonably foreseeable to him during the course of this conspiracy.

Finally, BURKHALTER admits that he has a valid prior felony drug conviction, that is, a conviction for which he pled guilty on or about December 3, 1993, to the charge of possession of cocaine (R.S. LA 40:967), in Orleans Parish District Court, under docket number 366-210("C"), and that he was sentenced to a term of imprisonment of four (4) years.

Maurice Landrieu (Date)
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Rick Tessier (Date)
Counsel for Defendant

Damon Burkhalter (Date)
Defendant